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**Hazardous Materials Advisory Council** 

DEPT. OF TRANSPO

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Washington FAX (202) 289-4074

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Dockets Office U.S. Department of Transportation Room PL-40 1 400 Seventh St., SW Washington, DC 20590-000 1

Re: In the matter of **Docket No. RSPA-00-7092** — 8 (**PDA-22(R)**): Application by American Truckir g Associations, Inc. for a Preemption Determination as to New Mexico Requirements for the Transportation of Liquefied and Compressed Gases

## Dear Sir/Madam:

The Hazardous Materials Advisory Council (HMAC) submits these comments on the application filed by the American Trucking Associations, Inc. (ATA) for a preemption determination regarding certain provisions of the State of New Mexico's requirements for the transportation of liquefied petroleum gas and compressed natural gas within New Mexico (Docket No. RSPA-00-7092 (PDA-22(R)) dated March 3 1, 2000).

HMAC is an international, non-profit, educational organization devoted to promoting safe y in the domestic and international transportation and handling of hazardous materials, substances and wastes. HMAC represents shippers, carriers of all modes, container manufacturers and reconditioners, emergency response and waste clean-up companies, and a variety of other companies and trade associations involved in the field of hazardous materials transportation. Its members that transport hazardous materials will be directly impacted by your resolution of PDA-22(R).

After careful review of the issues described in ATA's application for a preemption determination of New Mexico's requirements for the transportation of liquefied petroleum gas and compressed natural gas, HMAC strongly concurs with ATA that RSPA should determine that federal law preempts these provisions concerning personnel examinations, annual license and inspection fees, and vehicle inspections.

The New Mexico Liquefied Petroleum and Compressed Gas Bureau requires that any pers on who operates, loads or unloads an LP gas transport vehicle take a safety examination at a facility located in New Mexico before being allowed to conduct these activities within the State. It does not appear to exempt drivers in interstate commerce who are domiciled outside of the State. Applicants must take the test on specified dates and at designated locations

within the State, creating substantial administrative burdens for interstate operators. This requirement is clearly impractical for many out-of-state operators and presents an impediment to the flow of hazardous materials in commerce. In addition, the examination requirement should be preempted because, in our view, it violates 49 CFR 172.70 1 (Federal/State relationship) which specifies that a State may only impose more stringent training requirements, which includes testing, on drivers domiciled in that State.

The New Mexico Statutes Annotated (NMSA) requires motor carriers, including interstate carriers, to pay an annual flat license fee of \$125 (as well as a \$10 annual identification card renewal fee) to conduct the wholesale sale or delivery of LP gas in New Mexico. This money is deposited in the State general fund. However, 49 U.S.C. 5 125 provides that a State may impose a fee for the transport of hazardous material only if the fee is fair and used for a purpose related to hazardous material transport, including enforcement and planning, developing, and maintaining a capability for emergency response. In our opinion, the flat fee of \$125 per year imposed on all transporters moving LP gas within the State is clearly unfair to interstate carriers. If such fees were to be enacted by other States or jurisdictions, it would lead to assessments on interstate carriers many times the rate paid by local carriers for the same number of miles. The U.S. Supreme Court has declared in a previous ruling that flat fees of this nature violate the Commerce Clause and are preempted under Federal hazmat law. Also, since the fee is deposited in the general fund rather than used for hazmat transport purposes, this provision should be preempted.

Finally, the NMSA requires a safety inspection of vehicles used to transport LP gas. The inspection is conducted in New Mexico on a preset date and location. For an interstate carrier, this requirement often results in a loaded LP gas vehicle deviating from its destination route in order to fulfil the inspection provision. We believe this process and restrictive conditions will disrupt the flow of hazardous materials in commerce and create a dangerous situation. For this reason the NMSA requirement appears to violate 49 CFR 177.800(d) of the HMR which states there must be no unnecessary delay in the movement of hazmat. We note that RPSA has, in a previous decisional document, preempted vehicle safety inspections in California.

In summary, HMAC urges the Acting Associate Administrator to determine that the State of New Mexico's provisions on personnel examinations, annual license and inspection fees, and inspections for LP gas vehicles as cited by ATA in its application are preempted by federal: law.

I certify that copies of this comment have been sent to Messrs. Borngardner and Chapman at the addresses specified in the **Federal Register.** 

Sincerely,
Michael Minimettz

Michael Morrissette
Director of Technical Services